

# Public Charge Update

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# National Immigration Law Center (NILC)



Mission: to defend & advance the rights & opportunities of low-income immigrants and their family members.

Three integrated strategies: policy analysis and advocacy, impact litigation and strategic communications.

# Public Charge



# Public Charge: Key Facts

A public charge is a person who is dependent on the government for support

- A person who is deemed to be **likely** to become a public charge **in the future** can be denied:
  - permission to come to the US or
  - lawful permanent resident (LPR) status (a green card)
- In **rare** cases, a person can be deported for having become a public charge
- Public charge primarily affects family-based immigrants

# Where does public charge come up?

## Department of State (DOS)

Public charge policies applied to applications for visas or green cards submitted and processed **outside** the United States. This is done through consular offices around the world.

## Department of Homeland Security (DHS)

Public charge policies applied to applications for visas or green cards processed **inside** the United States.

## Department of Justice (DOJ)

Public charge policies for lawfully present immigrants who have **already been admitted** to the United States.

# Does this test apply to everyone?

Public charge *inadmissibility* primarily affects family-based immigrants

Here are some of the people that are **exempt**:

- Refugees and Asylees
- VAWA self-petitioners
- Survivors of Trafficking and other Serious Crimes (Applicants/recipients of U or T visa)
- Special Immigrant Juveniles

# How does the public charge test work?

Age

Income and  
Financial Status

Health

Education and Skills

Family Status

Affidavit of Support

Public charge inadmissibility is assessed prospectively - immigration officials look at a multiple factors, called a **“totality of circumstances”** to project whether a person will become a public charge in the future

# Changes to Public Charge



# Public charge timeline



Leaked Executive Order	Changes to the Foreign Affairs Manual (FAM)	DHS proposed rule and 60 day comment period. MORE THAN 260,000 comments submitted	Final DHS rule published to the Federal Register	DHS rule scheduled to go into effect BUT 5 federal courts issue preliminary injunctions!!! <b>DOS interim final rule published/ put on hold</b>	nationwide injunctions issued by 2 of 3 courts stayed	SCt stays last DHS nationwide injunctions	Effective date for DHS regulations and possibly DOS regulations
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# What does the SCt decision mean?

- ← The issue appealed to the SCt was whether the Second Circuit Court of Appeals should have decided to grant a **nationwide preliminary injunction**
- ← SCt issued a stay of the preliminary injunction, meaning that the new DHS public charge regulation can go into effect (except in Illinois) while the litigation moves forward
- ← DHS has announced that the regulation goes into effect February 24
- ← Litigation in multiple federal courts continues, and is now moving to the **merits**

# What is the status of the DOS regulations?

The State Department published its regulations on public charge inadmissibility as an Interim Final Rule (IFR) in October 2019

- ← Subsequently placed on hold while DOS developed a form (DS-5540) and updated the Foreign Affairs Manual
- ← Announced on February 12<sup>th</sup> that it will seek expedited OMB review of the form for implementation on February 24<sup>th</sup>, 2020

The State Department regulations use the definitions and standards incorporated into the DHS rule

How will the  
public charge test  
change?



# DHS Public Charge Rule

## NEW DEFINITION

A dramatically different definition of public charge

## TOTALITY OF CIRCUMSTANCES

New weighted factors of the totality of circumstances test make it harder for low and moderate income people to pass

## ADDITIONAL BENEFITS

Additional public benefits programs could be considered by immigration officials.

# Changes to definition

## CURRENT DEFINITION

An immigrant who is “primarily dependent on the government for subsistence”

## FEB 24th DEFINITION

A person who “receives one or more public benefits... for more than 12 months in the aggregate within any 36-month period (such that, for instance, receipt of two benefits in one month counts as two months).”

# Totality of Circumstances test

**Age**

**Income and  
Financial Status**

**Health**

**Education and Skills**

**Family Status**

**Affidavit of Support**

Negative factors include:

- Income below 125% of the FPL
- Diagnosed with a health condition that could require extensive care or interfere with ability to work
- Having less than a high school degree or equivalent
- Not proficient in English

Which benefits  
are considered?

Federal, state, local or tribal **cash assistance** for income maintenance, and

- ▶ Medicaid (Medi-Cal) (with exceptions)
- ▶ SNAP (CalFresh, Food Stamps)
- ▶ Section 8 housing assistance
- ▶ Public housing

# Medicaid Exceptions

- ▶ Medicaid for emergency services
- ▶ Health benefits received by a person under 21 years of age
- ▶ Health benefits received during pregnancy and for 60 days after



How will the changes be implemented?

The screenshot displays the USCIS website page for Form I-944, Declaration of Self-Sufficiency. The page is titled "I-944, Declaration of Self-Sufficiency" and includes the following content:

- Forms** section with links: "File Online - Create an Account or Sign In", "Most Popular Forms" (including Apply for Citizenship (Form N-400), Apply for a Green Card (Form I-485), Petition for Alien Relative (Form I-130), Apply for Employment Authorization (Form I-765), Affidavit of Support (Form I-864), and Employment Eligibility).
- Instructions:** "Use this form to demonstrate that you are not inadmissible based on the public charge ground (INA section 212(a)(4)). You must file this form if you are filing Form I-485, Application to Register Permanent Residence or Adjust Status, and you are subject to the public charge ground of inadmissibility. Please see the instructions for Form I-944 to see if you are subject to the public charge ground of inadmissibility."
- Exemptions:** "Certain classes of aliens (such as refugees, asylees, petitioners under the federal Violence Against Women Act, and certain T and U visa applicants) are exempt from the public charge ground of inadmissibility and therefore are not subject to the inadmissibility on Public Charge Grounds final rule. For more information about the classes of aliens who are exempt from the final rule, please see the USCIS Policy Manual."
- Important Notice:** "Do NOT use this form if you live in Illinois. The final rule is subject to an injunction from a federal court in Illinois. For more information, see our webpage on the status of the public charge rule in Illinois."
- Deadline:** "Do NOT submit this form before Feb. 24, 2020."
- Downloads:** "Form I-944 - Preview (PDF, 793 KB)" and "Instructions for Form I-944 - Preview (PDF, 336 KB)".

The page also features a search bar, navigation tabs (FORMS, NEWS, CITIZENSHIP, GREEN CARD, TOOLS, LEGAL RESOURCES), and a footer with the date 2/18/2020.

# New Form

US Citizenship and Immigration Services has created a new Form I-944, the Declaration of Self-Sufficiency

- ▶ The new form is filed in addition to the Form I-485, the application for Lawful Permanent Resident (LPR) Status

The screenshot shows a PDF document titled "Instructions for Declaration of Self-Sufficiency" from USCIS. The document is part of Form I-944, OMB No. 1615-0142, which expires on 10/31/2021. It is issued by the Department of Homeland Security, U.S. Citizenship and Immigration Services. The document is displayed in a web browser window with the address bar showing the file path: C:/Users/lessard/Downloads/i-944instr-pc%20(2).pdf. The document content includes sections for "What Is the Purpose of Form I-944?", "Who Must File Form I-944?", and "How Is Form I-944 Used?".

**Instructions for Declaration of Self-Sufficiency**

USCIS  
**Form I-944**  
OMB No. 1615-0142  
Expires 10/31/2021

**What Is the Purpose of Form I-944?**

Form I-944, Declaration of Self-Sufficiency, is used by an individual to demonstrate that he or she is not inadmissible based on the public charge ground (Immigration and Nationality Act (INA) section 212(a)(4)). An alien is inadmissible under INA section 212(a)(4) if he or she is more likely than not at any time in the future to receive one or more public benefits, as defined in 8 CFR 212.21(b), for more than 12 months in the aggregate within any 36-month period (such that, for instance, receipt of two benefits in one month counts as two months).

**Who Must File Form I-944?**

You must file this form if you are filing Form I-485, Application to Register Permanent Residence or Adjust Status, and you are subject to the public charge ground of inadmissibility.

In general, each applicant who submits Form I-485 must submit his or her own Form I-944 if the applicant is subject to the public charge ground of inadmissibility.

**How Is Form I-944 Used?**

# Form I-944

The I-944 requires applicants to provide extensive information and documentation, including:

- ▶ IRS transcripts of tax returns
- ▶ 12 months of bank statements
- ▶ Evidence of ownership and value for other assets
  - ▶ **For all members of the applicant's household**
- ▶ Credit report and score, if available
- ▶ Evidence of health insurance, including type of coverage and terms
- ▶ Evidence of all public benefits received or applied for

# People will need help!

Immigrants will need help understanding how to obtain the documentation required to complete the I-944

The instructions:

- ▶ Refer people to the free annual credit **report** website for credit **scores**
- ▶ Require people who have received or applied for benefits to provide letters, notices or other documents from their benefits-granting agency
- ▶ Require Native English speakers to provide “documentation of language proficiency, including language certifications”

# USCIS Fees

- ▶ There is no fee to file Form I-944 (Declaration of Self-Sufficiency)
- ▶ The fee to file Form I-485 (application for LPR status) is currently \$1520
- ▶ USCIS has proposed to increase its fees by an average of over 20%
  - ▶ The proposed fee for Form I-485 is \$2750
  - ▶ This would be an increase of over 56%

# Questions

# Resources

Law and Policy:

<https://protectingimmigrantfamilies.org/>

Community Education, Research and other resources  
on Public Charge:

<https://www.nilc.org/>